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WILEY, REIN & FIELDING

1776 K STREET, N. W.
WASHINGTON, D. C. 20006
(202) 429-7000

WRITER'S DIRECT DIAL NUMBER
(202) 429-7368

FACSIMILE
(202) 429-7049

June 4, 1997

By HAND DELIVERY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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JUN - 4 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: **Texas Instruments, Inc.**
Opposition to Petition for Partial Reconsideration
CC Docket No. 92-297

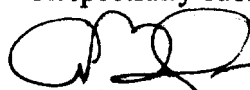
Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Texas Instruments, Inc. are the original and four (4) copies of its Opposition to Petition for Partial Reconsideration filed in the above-referenced proceeding by Sierra Digital Communications, Inc.

You are requested to date-stamp the enclosed "Return" copy and return it to the courier delivering this package.

If any additional information is desired in connection with this matter, please contact the undersigned.

Respectfully submitted,


A. B. Cruz III

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUN - 4 1997

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Rulemaking to Amend Parts 1, 2, 21, and)	CC Docket No. 92-297
25 of the Commission's Rules to Redesignate)	
the 27.5-29.5 GHz Frequency Band, to)	
Reallocate the 29.5-30.0 GHz Frequency Band,)	
to Establish Rules and Policies for Local)	
Multipoint Distribution Service and for Fixed)	
Satellite Services)	
)	
Petitions for Reconsideration of the Denial)	
of Applications for Waiver of the)	
Commission's Common Carrier Point-to-Point)	
Microwave Radio Service Rules)	
)	
Suite 12 Group Petition for Pioneer's)	PP-22
Preference)	

To: The Commission

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

Texas Instruments, Inc. ("TI"), by its attorneys and pursuant to Sections 1.429(f) and 1.4(b)(1) of the Federal Communications Commission's ("FCC" or "Commission") Rules,¹ hereby opposes the Petition for Partial Reconsideration filed by Sierra Digital Communications, Inc. ("Sierra") (the "Petition") in the above-captioned proceeding. In its Petition, Sierra assails certain Commission actions, findings and decisions announced in the FCC's Second Report and

¹ 47 C.F.R. §§ 1.429(f) , 1.4(b)(1) (1996); see also FCC's Public Notice, Report No. 2196 (May 15, 1997).

Order issued in this proceeding.² However, as discussed more fully below, the Commission has aptly addressed and provided overwhelming justification for each of these actions, findings and decisions. Accordingly, TI respectfully urges the Commission to summarily deny Sierra's Petition and proceed immediately with the long-awaited auction and licensing of spectrum to allow for the expeditious implementation of Local Multipoint Distribution Service ("LMDS").

DISCUSSION

I. The Commission Should Proceed Immediately With the Auction of Designated Spectrum to Allow For the Expeditious Implementation of LMDS.

As a matter overriding importance, TI reiterates that it is imperative that the Commission proceed promptly with the auction and licensing of spectrum to make possible the introduction of LMDS as a competitive broadband alternative to a wide range of interactive communication services. As TI and many others have already noted in this proceeding, any further delay in the auction and licensing of LMDS could seriously jeopardize the opportunity currently available to prospective LMDS operators to provide an impressive array of interactive video, data and voice communications services to American homes, schools, hospitals and businesses.³

Additional procedural delays directly threaten the successful deployment of LMDS in this country. Indeed, given the backdrop of rapidly evolving innovations and technologies and an

² Rulemaking to Amend Parts 1, 2, 21, and of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking), FCC 97-82 (released March 13, 1997) ("Second Report and Order").

³ See, e.g., Comments of TI at 1-5; Comments of CellularVision USA, Inc. at 6; Joint Comments of Bell Atlantic Corporation and SBC Communications, Inc. at 16; Reply Comments of TI at 1-4.

increasingly competitive local telecommunications landscape, further postponement of the LMDS auction may negatively impact LMDS licensees' ability to compete effectively in the marketplace. Furthermore, while LMDS proponents in this country are having to endure a protracted spectrum allocation process that now has spanned almost five years, other countries, like Canada and Mexico, continue to forge ahead with established plans to deploy their own LMDS-like services on a wide-scale basis, thus opening the door for foreign equipment manufacturers and related entities to gain easy advantage over their U.S. counterparts.

For the foregoing reasons, TI strenuously opposes any additional delays in this proceeding. TI respectfully urges the Commission to deny the Petition filed by Sierra and move quickly to finalize the spectrum plan and service rules for LMDS so that the auction and licensing of this promising service can proceed. Even if the Commission elects to reexamine any of the issues raised in the Petition, it should proceed without delay to auction and license the one GHz of spectrum already allocated to LMDS.

II. The Commission's 31 GHz Segmentation Plan Strikes an Acceptable Balance Between the Immediate Spectrum Requirements of LMDS and the Need to Protect the Operations of Governmental and Private Business Incumbent Licensees.

In the Second Report and Order, the Commission announced the adoption of a 31 GHz segmentation plan, pursuant to which it designated 300 MHz of spectrum in the 31 GHz band (i.e., 31.000-31.300 GHz) for LMDS.⁴ However, under the FCC's segmentation plan, governmental and private business licensees currently authorized in the 31 GHz band would be permitted to continue existing operations in the upper and lower 75 MHz bands (i.e., 31.000-31.075 GHz and 31.225-31.300 GHz) and receive protection from harmful interference from

⁴ Second Report and Order at ¶ 80.

LMDS licensees. The plan contemplates incumbent and LMDS operators authorized in the two outer bands negotiating with each other to determine the protection measures necessary to avoid mutual harmful interference.⁵

In its Petition, however, Sierra renews its call for the Commission to partition the 300 MHz of spectrum in the 31 GHz band equally between LMDS and the existing and potential users of the band. Specifically, Sierra urges the Commission to retain the outer 150 MHz of the 31 GHz band for solely existing and potential users for fixed service point-to-point microwave systems under the existing 31 GHz rules.⁶ Under Sierra's proposal, only the middle 150 MHz of the 31 GHz band (i.e., 31.075 - 31.225 GHz) would be designated for LMDS use on a primary protected basis.⁷

In an attempt to justify its partitioning proposal, Sierra argues that the record in this proceeding supports an allocation for LMDS of no more than 1,000 MHz of spectrum⁸ and that the Commission has continued to underestimate the potential near-term growth of private point-to-point operations in the 31 GHz band.⁹ Sierra goes on to contend in its Petition that the Commission has failed to accord proper weight to the public interest involved in existing and future private 31 GHz operations and that such public interests outweigh those in LMDS.¹⁰

⁵ Id. at ¶¶ 37, 80.

⁶ Sierra's Petition at 2-4.

⁷ Id.

⁸ Id. at 5-6.

⁹ Id. at 6-10.

¹⁰ Id. at 10-15.

However, the record demonstrates that the Commission has thoroughly addressed each of the points raised again in Sierra's Petition. More importantly, TI firmly believes that the Commission's 31 GHz segmentation plan strikes an acceptable balance between the immediate spectrum needs of LMDS and the importance of protecting the existing operations of government and private business incumbent licensees in the interest of public safety and related concerns.

Sierra's contention that the record fails to support the allocation of any more than 1,000 MHz for LMDS is entirely misplaced. As the Commission noted in its Second Report and Order, "LMDS proponents consistently have demonstrated throughout this proceeding that each LMDS operator must have at least 1 gigahertz of unencumbered spectrum" in order to tap the full potential of LMDS as a "competitive broadband alternative to local exchange services offered by local telephone companies and to video programming provided by wireline cable operators."¹¹ In addition, as the Commission prudently recognized, providing LMDS operators access to the entire 300 MHz in the 31 GHz band will facilitate LMDS operators' ability to deliver to the public the full complement of telecommunications and video services contemplated for LMDS.¹² Moreover, the Commission previously affirmed its support for securing additional spectrum for LMDS and directed its staff to continue discussions with NTIA on the shared use or reallocation

¹¹ Id. at ¶ 39 (emphasis added). In fact, in its original rulemaking notice in this proceeding, the FCC proposed to allocate 2,000 MHz for LMDS. Rulemaking to Amend Part 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (Notice of Proposed Rulemaking, Order, Tentative Decision, and Order on Reconsideration), 8 FCC Rcd. 557, 559 (1993).

¹² Id. at 40.

of portions of the 25.25-27.5 GHz bands from the government to LMDS.¹³ Based on the foregoing and contrary to Sierra's contention, the need for more than one GHz of spectrum for LMDS has been well-established in this proceeding.

In addressing Sierra's continuing allegation that the FCC has underestimated the potential near-term growth of private point-to-point operations in the 31 GHz band, the Commission clarified the nature and scope of the services authorized in the 31 GHz band, and reminded parties that it has the responsibility "to revisit spectrum use to determine whether it is being put to the most efficient and effective use in the public interest."¹⁴ Specifically, the FCC pointed out that it originally made spectrum available at 31 GHz "to satisfy various short-range, fixed and mobile communications needs pursuant to reduced licensing and coordination requirements," and that to encourage expanded use of the band, it authorized operations on a co-equal, non-protected basis.¹⁵ Use of the 31 GHz band has to date been minimal and Sierra Digital has been wholly unable to show otherwise. Indeed, as TI has previously shown, the number of entities operating under the existing rules for 31 GHz services is extremely small and represents a tiny fraction of potential eligibles.¹⁶ Clearly, the nature and scope of the existing operations in the 31 GHz band does not, in any way, represent or resemble the most efficient or effective use of that band.

¹³ See Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.5 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (First Report and Order and Fourth Notice of Proposed Rulemaking), CC Docket No. 92-267, FCC 96-311 at ¶ 39 (released July 22, 1996) ("Fourth Notice").

¹⁴ Second Report and Order at ¶ 54-55.

¹⁵ Id.

¹⁶ Id. at ¶ 56.

Accordingly, the Commission's actions and decisions associated with its designation of 300 MHz of spectrum in the 31 GHz band for LMDS were entirely proper and fully warranted.

Finally, notwithstanding Sierra's arguments to the contrary, the Commission has been painstakingly careful in this proceeding to thoroughly examine the public interests associated with the existing operations in the 31 GHz band and to balance those interests against the potential of LMDS as a new technology capable of providing innovative services to meet the nationwide demand for improved wireless telecommunications service.¹⁷ Indeed, on the one hand, the FCC has acknowledged that: (1) traffic control systems provide an important service to local governments with respect to vehicle traffic and air pollution management; (2) incumbent 31 GHz licensees have existed co-equally and free from interference up until now, and (3) licensed municipalities have made substantial investments in public safety operations using 31 GHz radio links, which may warrant protection from harmful interference.¹⁸ On the other hand, the FCC has also recognized that incumbent licensees in the 31 GHz band do not presently use the spectrum intensively¹⁹ and LMDS is an innovative technology with the potential of providing the public with a full range of telecommunications services that will greatly enhance customer choice and competition in the marketplace.²⁰

TI notes that it was the result of this "balancing" that the Commission decided upon a band plan that would provide spectrum for and afford protection to existing governmental and

¹⁷ Id. at ¶ 67-68.

¹⁸ Id.

¹⁹ Id. at ¶ 36.

²⁰ Id. at ¶ 68.

private operators in the 31 GHz band. In this regard, it is worth noting that TI and a number of other proceeding participants still firmly believe that, because the existing 31 GHz licensees knowingly accepted non-protected, secondary licenses, they have no legitimate expectation of protection from harmful interference from LMDS operators.²¹ Contrary to Sierra's assertions, TI believes the FCC has accorded more than sufficient weight to the public interests associated existing operations in the 31 GHz band and given ample deference to those licensees, in spite of their non-protected, secondary status. Indeed, it is obvious from the Commission's actions that, far from being harmed, incumbent 31 GHz users have been given protected status despite the fact that they are legally secondary services. From this, it is difficult to see what existing users have much to complain about. Even so, TI submits that the Commission's 31 GHz segmentation plan represents an acceptable accommodation of the competing needs and interests of LMDS and incumbent licensees.

III. Reinstatement of Applications for Secondary, Non-Protected Uses of the 31 GHz Band Would be Inconsistent With the Commission's 31 GHz Segmentation Plan.

Sierra argues in its Petition that the Commission should reinstate all 31 GHz applications filed with the Commission between the release of the Fourth Notice, on July 22, 1996, and release of the Second Report and Order on March 13, 1997.²² Sierra also contends that the "reinstated applications should be entitled to the same interference protections as the incumbents, and applicants that specified the middle sub-band should be permitted to amend to the outer sub-

²¹ See, e.g., Reply Comments of TI at 6-7; Reply Comments of CellularVision at 4.

²² Sierra's Petition at 15.

bands.”²³ In support of the foregoing, Sierra claims that the applicants whose applications were dismissed had little or no notice of the proposed rule changes, and therefore had no opportunity to act. Sierra goes on to suggest that local or State governments, attempting to implement traffic control systems, have by the time they filed their applications, already invested substantial time and effort, making dismissal of such applications particularly disruptive.²⁴ Sierra concludes that the public interest benefits associated with the dismissed applications outweigh the “very limited benefits of auctioning the sub-bands free of the pending applications.”²⁵

Inasmuch as the applications at issue were for secondary, non-protected uses of the 31 GHz band, the Commission’s decision to dismiss them as being inconsistent with the agency’s 31 GHz segmentation plan was entirely proper. TI notes that the Commission concluded that all 300 MHz of spectrum in the 31 GHz band is necessary “to fully accommodate the development and deployment of LMDS” and that “any reductions in the proposed spectrum block would delay the development of important equipment and limit the ability of LMDS providers to offer very high bandwidth services.”²⁶ Incumbent licensees themselves have acknowledged the inherent incompatibility of their services with LMDS²⁷ It follows, therefore, that reinstatement of the dismissed applications would entirely upset the intended purpose and objectives of the FCC’s 31 GHz segmentation plan. Finally, Sierra wholly fails to explain why the July notice was

²³ Id. at 15-16.

²⁴ Id. at 16.

²⁵ Id. at 18.

²⁶ Second Report and Order at ¶ 98 (emphasis added).

²⁷ Id.

insufficient to provide adequate notice to existing or potential users. The notice on its face clearly anticipated the reallocation of the spectrum to LMDS on a primary basis. Indeed, numerous parties associated with the incumbent use of 31 GHz participated in the proceeding. Accordingly, the Commission should deny Sierra's request.

CONCLUSION

For the reasons set forth herein, TI strongly urges the Commission to deny Sierra's Petition and proceed expeditiously with the auction and licensing of spectrum which, in turn, will enable a wide range of entrepreneurs to harness LMDS technology and provide consumers with interactive video, voice and data services.

Respectfully submitted,

TEXAS INSTRUMENTS, INC.

By: 

Robert L. Pettit
A. B. Cruz III
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D. C. 20006
(202) 429-7000

June 4, 1997

Its Attorneys

491477

CERTIFICATE OF SERVICE

I, Christine Peyton, a secretary with the law firm of Wiley, Rein and Fielding, certify that I have this 4th day of June, 1997, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing **OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION** to the following:

Chairman Reed E. Hundt*
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

Commissioner Rachelle B. Chong*
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

Commissioner James H. Quello*
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

William E. Kennard*
General Counsel
Federal Communications Commission
Room 614
1919 M Street, N.W.
Washington, DC 20554

Daniel B. Phythyon, Acting Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

Gerald P. McCartin, Esquire
Mitchell Lazarus, Esquire
Arent Fox Kitner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339

* By Hand Delivery

Christine Peyton
Christine Peyton

491477